



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107-4431

Mr. J. B. Asthana, Ph.D., P.E.  
Chief of Environmental Engineering  
New Castle County Department of Public Works  
100 New Churchmans Road  
New Castle, De. 19720-3192

JAN 29 1998

Re: Pretreatment Program  
NPDES Permit No. DE0050547

Dear Mr. Asthana:

I am pleased to approve the modifications to the enforcement response plan (ERP) of the New Castle County pretreatment program in accordance with the General Pretreatment Regulations (40 C.F.R. 403). The ERP was submitted on August 25, 1997 as a non-substantial program modification.

The Environmental Protection Agency's General Pretreatment Regulations describe the local pretreatment responsibilities based on the Clean Water Act. The pretreatment program that New Castle County implements must be consistent with these regulations and your approved program.

If this Agency can be of any assistance to you in administering this program, please feel free to contact us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Victoria P. Binetti", is written above the typed name.

Victoria P. Binetti  
Associate Director for  
Municipal Assistance  
Water Protection Division

cc: Paul Janiga, DE DNREC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107-4431

NOV 25 1997

Mr. J. B. Asthana, Ph.D., P.E.  
Chief of Environmental Engineering  
New Castle County Department of Public Works  
100 New Churchmans Road  
New Castle, De. 19720-3192

Re: NPDES Permit Number DE0050547  
Public Notice Number: DE-155-JML

Dear Mr. Asthana:

I am pleased to approve the modifications to the legal authority of the New Castle County pretreatment program in accordance with the General Pretreatment Regulations (40 C.F.R. 403). The intention to approve this modification was announced to the public on September 29, 1997 and no comments were received.

The Environmental Protection Agency's General Pretreatment Regulations describe the local pretreatment responsibilities based on the Clean Water Act. The pretreatment program that New Castle County implements must be consistent with these regulations and your approved program.

If this Agency can be of any assistance to you in administering this program, please feel free to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Victoria P. Binetti".

Victoria P. Binetti  
Associate Director for  
Municipal Assistance  
Water Protection Division

cc: Paul Janiga, DE DNREC

PUBLIC NOTICE

Environmental Protection Agency Region III  
Office of Municipal Assistance (3WP24)  
Water Protection Division  
841 Chestnut Building  
Philadelphia, PA 19107

Public Notice Number: DE-155-JML

Public Notice Date: **SEP 29** 1997

The following Publicly Owned Treatment Works (POTW), has requested approval of modifications to its approved pretreatment program:

Name and Address of Applicant (Permittee)

New Castle County Department of Public Works  
100 New Churchmans Road  
New Castle, De. 19720-3192  
NPDES Permit Number: DE0050547  
Receiving Stream: Appoquinimink Creek

Procedures for Final Determination

The Environmental Protection Agency, Region III, is issuing the following notice of proposed action under the Clean Water Act, as amended, and implementing regulations.

The permittee has requested approval of modifications to a POTW pretreatment program in accordance with requirements of 40 CFR 403.18 and is being public noticed by the EPA in accordance with 40 CFR 403.11. The modifications to the permittee's pretreatment program include legal authority.

The program modifications submission is available for inspection and copying at the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Further information may be obtained by writing to the above address (mail code 3WP24) or by calling John Lovell at (215) 566-5790.

Persons wishing to submit comments or object to the EPA approval of the above POTW pretreatment program modifications, or to request a public hearing pursuant to the Federal Water Pollution Control Act, should submit their comments or request in writing within thirty (30) days of the date of this notice to the

above EPA address. If no comments to this notice are received, the proposed pretreatment program modification referenced above will be approved without changes and without further public notice. In such event, this notice shall constitute the "notice of approval or disapproval" required by 403.11(e) and no additional notice shall be provided. Anyone who wishes to be given a notice of approval or disapproval of the modifications should send a request for such notice to the above EPA address.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107-4431

SEP 15 1997

Mr. J. B. Asthana, Ph.D., P.E.  
Chief of Environmental Engineering  
New Castle County Department of Public Works  
100 New Churchmans Road  
New Castle, De. 19720-3192

Re: NPDES Permit Number DE0050547  
Public Notice Number: DE-155-JML

Dear Mr. Asthana:

I am pleased to approve the modifications to the legal authority of the New Castle County pretreatment program in accordance with the General Pretreatment Regulations (40 C.F.R. 403). The intention to approve this modification was announced to the public on August 11, 1997 and no comments were received.

The Environmental Protection Agency's General Pretreatment Regulations describe the local pretreatment responsibilities based on the Clean Water Act. The pretreatment program that New Castle County implements must be consistent with these regulations and your approved program.

If this Agency can be of any assistance to you in administering this program, please feel free to contact us.

Sincerely,

A handwritten signature in cursive script, reading "Victoria P. Binetti".

Victoria P. Binetti  
Associate Director for  
Municipal Assistance  
Water Protection Division

cc: Paul Janiga, DE DNREC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107-4431

JUL 30 1997

Mr. J. B. Asthana, Ph.D., P.E.  
Chief of Environmental Engineering  
New Castle County Department of Public Works  
100 New Churchmans Road  
New Castle, De. 19720-3192

Re: NPDES Permit Number DE0050547  
Public Notice Number: DE-155-JML

Dear Mr. Asthana:

Enclosed is a copy of the Public Notice detailing the Environmental Protection Agency's (EPA) intention to approve modifications to your pretreatment program, including legal authority, in accordance with Section 403.11 of the General Pretreatment Regulations. After completion of the 30 day comment period, you will be notified of EPA's decision to approve or disapprove these modifications.

If you have any questions, please do not hesitate to contact me at (215) 566-5790.

Thank you for your cooperation.

Sincerely,

A handwritten signature in dark ink, which appears to read "John Lovell", is written over a pre-printed name.

John Lovell  
Pretreatment Coordinator

Enclosure

cc: Paul Janiga, DE DNREC

PUBLIC NOTICE

Environmental Protection Agency Region III  
Office of Municipal Assistance (3WP24)  
Water Protection Division  
841 Chestnut Building  
Philadelphia, PA 19107

Public Notice Number: DE-155-JML

Public Notice Date: **AUG 11 1997**

Public Notice  
Not Published

The following Publicly Owned Treatment Works (POTW), has requested approval of modifications to its approved pretreatment program:

Name and Address of Applicant (Permittee)

New Castle County Department of Public Works  
100 New Churchmans Road  
New Castle, De. 19720-3192  
NPDES Permit Number: DE0050547  
Receiving Stream: Appoquinimink Creek

Procedures for Final Determination

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The program modifications submission is available for inspection and copying at the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Further information may be obtained by writing to the above address (mail code 3WP24) or by calling John Lovell at (215) 566-5790.

Persons wishing to submit comments or object to the EPA approval of the above POTW pretreatment program modifications, or to request a public hearing pursuant to the Federal Water Pollution Control Act, should submit their comments or request in writing within thirty (30) days of the date of this notice to the

above EPA address. If no comments to this notice are received, the proposed pretreatment program modification referenced above will be approved without changes and without further public notice. In such event, this notice shall constitute the "notice of approval or disapproval" required by 403.11(e) and no additional notice shall be provided. Anyone who wishes to be given a notice of approval or disapproval of the modifications should send a request for such notice to the above EPA address.



## DEPARTMENT OF SPECIAL SERVICES

100 NEW CHURCHMANS ROAD, NEW CASTLE, DE 19720  
(302) 323-2647

FAX (302) 323-2674

JOSEPH J. FREEBERY

ENGINEERING DIVISION, ENVIRONMENTAL COMPLIANCE

GENERAL MANAGER

August 25, 1997

John Lovell  
Pretreatment Coordinator  
USEPA, Region III  
841 Chestnut Building  
Philadelphia, PA 19107-4431

**RE: Pretreatment Program  
Enforcement Response Plan (ERP)  
NPDES No. DE0050547**

Dear Mr. Lovell:

With reference to your comments, dated July 2, 1997, on the draft ERP, and our subsequent telephone conversations, the enclosed revised ERP is submitted for approval as a non-substantial modification to the County's pretreatment program. The draft document was previously provided to industrial users for comments, which have been incorporated.

The ERP has been modified to a point accrual system to provide more comprehensive management of noncompliance as well as flexibility in assessing penalties. This modification will not decrease stringency of requirements imposed on industrial users.

Should you have any questions or require further information on the above, please contact me at 302-323-2610.

Sincerely,

Louise Melchor  
Environmental Engineer

cc: Jit Asthana, NCC  
Paul Janiga, DE DNREC

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107-4431

JUL 2 1997

Mr. J. B. Asthana, Ph.D., P.E.  
Chief of Environmental Engineering  
New Castle County Department of Public Works  
100 New Churchmans Road  
New Castle, De. 19720-3192

Re: Pretreatment Program  
NPDES No. DE0050547

Dear Mr. Asthana:

I have completed review of the County's enforcement response plan (ERP). Based on my review, I believe that some revisions would be appropriate before it is finalized, as indicated below.

General Information - Scope

Since the County also implements a large portion of the City of Wilmington pretreatment program, this section should indicate whether the County intends for this ERP to be applied in enforcement decisions regarding users that ultimately discharge to the Wilmington treatment plant, or if it only applies to the users that discharge to the County's treatment plant. If it is intended to apply to the City's users, then the County should ensure that the arrangement is acceptable to the City.

Enforcement Responses

Section III.A of the ERP lists the enforcement responses and the anticipated time frame for initiation of each type of enforcement action. This is appropriate. However, the County must provide a description of each type of action. For example, it is unclear what the difference is between a non-compliance notification and a notice of violation, or between a compliance schedule and an administrative order. In addition, it is unclear what will happen as a result of a show cause notice (hearing?), either at the hearing or as a result of the hearing. Examples of any written documents (e.g., notice of violation) would be

helpful.

#### Definition of Significant Non-Compliance

Criteria F potentially applies to reports other than those listed, and so would be better listed as "Failure to provide required reports, such as reports..."

#### Point Assessment Criteria

Although the mechanism for applying the point assessment criteria is to a large extent at the discretion of the County, I have an alternative suggestion on applying the point assessment criteria that may be more appropriate.

The County could assign a point value to each type of violation as is currently done in the enforcement response guide (ERG). However, rather than also assign an enforcement response, each enforcement action type would be assigned a point range. When violations occur, the County would add the point values for all the violations, and initiate the appropriate enforcement action for that point value. For example, the non-compliance notification (NCN) could be assigned a point range from 0 to 0.99. Any user that accumulated a violation point total of below 1.0 would receive a NCN. The points would continue to accumulate until the user resolved the violation, thus causing an escalation of enforcement for continuing violations. It may be appropriate in such a scenario to stay the accumulation of additional violation points if the user is in compliance with an administrative order or compliance schedule which addresses the specific violation and requires compliance by a specific date. This would avoid escalation of enforcement for a situation that had been addressed through a previous enforcement action.

I have the following comments on the point assessment criteria proposed by the County. It is unclear what is meant when the ERP states that points are to be accumulated on a running 180 day basis. Does this mean that the number of points is reset to zero at the start of each new 180 day period? This would be inappropriate because it does not reflect the more seriousness of long term violations. In general, the point value should continue to accumulate until the violation is corrected.

The ERP states that when the violation point value equals or exceeds four points, the pretreatment coordinator will determine

an appropriate response. This needs to be defined more precisely. Essentially, the ERP is not committing to escalating enforcement beyond the show cause hearing, which is unacceptable. The ERP must commit to continued escalation until compliance is achieved.

The ERP states that when a new user takes over a facility that was previously in violation, all points are voided. I believe it would only be appropriate to do this if the violations were eliminated or the user was placed on a compliance schedule for elimination of the violations.

#### Basis for Fines

Although not required by EPA regulations, it may be appropriate to develop a penalty policy. This would establish a guidance for use by the County for determining the amount of the fine, and would provide some assurance to the users that the fines were being imposed consistently.

#### Enforcement Response Guide

**Exceedance of Local/Federal Standard or Permit Limit** - The ERG does not address nonsignificant, recurring violations. In addition, some indication of what is considered "isolated" and "recurring" should be provided.

**pH Excursions** - The ERG should address situations where monthly monitoring indicates violations other than during three consecutive months. Generally, any violation should receive follow-up.

**Failure to mitigate noncompliance or halt production** - It may be appropriate to differentiate on the basis of whether or not the user has received prior notice of the problem. If a prior notice has occurred, it is probably appropriate to issue more than an NOV, even where there is no harm. Where there is harm, it may be appropriate to escalate to 4.0 points immediately.

**Improper Sampling** - Where there is evidence of intent, it may be appropriate to escalate to 4.0 points immediately. In general, where there is evidence of intentional violation, criminal prosecution should be considered.

**Spills/Slugs** - There does not appear to be any responses listed

for spill or slug situations, except where there is a failure to notify of a spill. These types of discharges should be addressed, especially if they cause a problem at the POTW.

**Late submittal of report** - There does not appear to be any escalation where the report is not submitted in response to the NOV. Also, it is unclear how a compliance schedule would address a recurring late report. The timeliness of the report is already a requirement, so establishing a schedule for submission of the reports appears to be inappropriate. Fines would probably be more appropriate.

**Compliance Schedules** - In all cases, the "Nature of Violation" is listed as "without sufficient cause." This does not address the situations where there is a violation where there is "sufficient cause." These violations should not be simply ignored. In addition, an indication of what is meant by "sufficient cause" should be provided.

**Entry denial, limited access, and/or refusal to present records** - If a user denies the County access to all or part of its facility, it may be necessary for the County to obtain a warrant in order to legally enter the facility. This should be addressed as an option.

**Recordkeeping** - It is unclear why failure to maintain records is treated less severely than failure to maintain records for a sufficient period of time. It may be more appropriate for these responses to be equal. Also, repeated failure to maintain required records should be addressed.

If you have any questions regarding this matter, please contact me at 215-566-5790.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Lovell".

John Lovell

Pretreatment Coordinator

cc: Paul Janiga, DE DNREC



**DEPARTMENT OF PUBLIC WORKS  
100 NEW CHURCHMANS ROAD  
NEW CASTLE, DELAWARE 19720-4869**

**OPERATIONS  
DIVISION**

**(302) 323-2642  
FAX (302) 323-2674**

April 25, 1997

John Lovell,  
Pretreatment Coordinator  
USEPA, Region III  
841 Chestnut Building  
Philadelphia, PA 19107-4431

**RE: Revisions to Enforcement Response Plan (ERP)  
Pretreatment Program  
NPDES No. DE 0050547**

Dear Mr. Lovell:

Enclosed please find a draft copy of the revised Enforcement Response Plan (ERP) for the Middletown Industrial Pretreatment Program, for review and comments. Industrial Users in the Middletown Pretreatment Program have also been provided notification of the proposed revisions to the ERP.

The ERP has been modified to a point accrual system to provide more comprehensive management of noncompliance as well as flexibility in assessing penalties. This non-substantial modification of the Pretreatment Program will not decrease stringency of requirements imposed on industrial users.

Should you have any questions or require further information on the revisions, please contact Louise Melchor at 323-2610.

Very truly yours,

J. B. Asthana, PhD, P.E.  
Chief of Environmental Engineering

LM:  
Encl.

file:d:\memos\lepaerp2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107-4431

Ms. Louise Melchor, Environmental Engineer  
New Castle County Department of Public Works  
100 New Churchmans Road  
New Castle, De. 19720

DEC 23 1996

Re: Pretreatment Program  
NPDES No. DE 0050547

Dear Ms. Melchor:

This is in response to our phone conversation of yesterday, December 19, 1996. You had asked whether monthly sampling is required to monitor compliance with a monthly average limit.

The General Pretreatment Regulations, 40 CFR 403, require that any significant industrial user, including categorical industrial users, submit the results of self-monitoring at least twice per year (unless the POTW opts to monitor in the user's place). In addition, the regulations require that the POTW conduct its own monitoring at least once per year. Additional user or POTW monitoring would be required if it were necessary to accurately determine the compliance of the user. This could mean that for an individual user monitoring would be necessary on a quarterly, monthly, weekly, or other basis, depending on the particular circumstances of the user. However, there is no requirement that all users subject to a monthly average limit conduct monitoring at least on a monthly basis.

To determine compliance with the monthly average limit, all monitoring results (both from the user and the POTW) obtained during a given calendar month are averaged. This average is compared to the monthly average limit. If no monitoring results are obtained for a given month, no compliance determination is made for that month.

I hope this answers your question. If you have any question regarding this matter, or any other pretreatment matter, please contact me at 215-566-5790.

Sincerely,

A handwritten signature in black ink that reads "John Lovell".

John Lovell  
Pretreatment Coordinator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107-4431

SEP 20 1994

Mr. J. B. Asthana, Ph.D., P.E.  
Chief of Environmental Engineering  
New Castle County Department of Public Works  
100 New Churchmans Road  
New Castle, De. 19720-4869

Re: Pretreatment Program  
NPDES No. DE0050547

Dear Mr. Asthana:

I have reviewed the County's draft revisions to its Industrial Pretreatment Regulations, as well as your letter of April 8, 1994. It is acceptable to EPA for Middletown to adopt the New Castle County Pretreatment Regulations by reference. If Middletown has no desire to participate in the implementation of the ordinance, it might be appropriate for them to designate the Count as the implementing agency for the ordinance.

The enforcement response plan has been received and incorporated into the Count's approved pretreatment program. Since it is not a substantial modification under EPA's pretreatment regulations, no further action or formal approval is necessary. You should begin implementation of the plan immediately.

The draft New Castle County Industrial Pretreatment Regulations will need some revisions in order to make them acceptable. My comments are provided below.

The definition of "BMR" refers to "40 CFR 403". It recommended that the specific citation be provided (40 CFR 403.12(b)).

The definition of "New Source" includes the first part of the definition contained in EPA's regulations. It is recommended that the County include the entire EPA definition, or at least up to the "provided that" language in the EPA definition.

The definition of "Pretreatment Requirements" includes requirements other than a "pretreatment standard". Since the County Regulations use the term "national pretreatment standard" (rather than simply "pretreatment standard"), it is recommended that "national pretreatment standard" be used in this definition as well.

EPA's regulations contain two different definitions of "slug". The first, found at 40 CFR 403.8(f)(2)(v) defines a slug as "any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or non-customary batch discharge". The second, found at 40 CFR 403.12(f) is essentially equivalent to the County's proposed definition of slug. However, as the term is used in the County's ordinance, it must include both EPA definitions to satisfy EPA's legal authority requirements. It would be easiest to accomplish this by combining the two definitions with an "or".

Section 16-63(a) of the County's regulations requires existing non-domestic users to apply for a permit when notified by the director. It is recommended that significant users be required to apply for a permit regardless of County notification. This would place the liability on the user for making an application whether or not the County has made the notification. As currently written, a user that has escaped the County's attention is not required to come forward to apply for a permit. In addition, it is recommended that the last sentence of this section include the time frame for submission of the baseline monitoring report.

EPA regulations require that the statement of whether standards are being met be reviewed by an authorized representative of the user and certified by a qualified professional. Therefore, Section 16-63(b)(8) of the County's regulations must be revised. If it were to read "a statement reviewed by an authorized representative of the user and certified by a qualified professional indicating whether the standards are being met..." (addition underlined) it would be acceptable. In addition, it appears that the certification statement added to this section would be more appropriate in a separate reporting requirements section since it applies to more than just the permit application.

Since the term "authorized representative" is used in several places in the regulations, it must be defined.

Section 16-63(b) requires that users provide notification of hazardous waste discharges. However, since this requirement is only contained under the permit application requirements, users are not required to provide notification except when submitting an application. The County must revise the regulations to reflect EPA's requirement that this notification be made at the time of the discharge.

Section 16-63(c) states that the Director "will" issue a draft permit and "shall" issue a final permit. These two words must be changed to "may" (or an equivalent) to reflect the Director's discretion to issue or not issue a permit.

Section 16-63(d)(7) establishes a requirement to submit a 90-day compliance report for categorical users. However, since it is contained in the "permit conditions" section of the ordinance, it is only applicable to those users that have had permits issued with this condition included. The regulations must be amended to make this a requirement for all categorical users whether or not they have a permit. Moving this language to a separate reporting section would accomplish this. In addition, this section requires that the 90-day report include "the information described in Section 16-63(b)". However, Section 16-63(b) does not require all the information required by the EPA regulations. Therefore, the 90-day report requirement must be changed to include the necessary requirements directly, or Section 16-63(b) must be changed to include the 90-day report requirements.

Section 16-63(d)(11) requires submission of all monitoring data by industrial users. However, since it is included in the "permit conditions" section of the regulations, it is only applicable to those users that have had permits issued with this condition included. The regulations must be amended to make this a requirement for all users required to conduct sampling. Again, moving the existing language to a separate reporting section would accomplish this.

Although Section 16-63(d) (permit conditions) allows the County to include "other conditions as deemed appropriate" in the permits, it is recommended that the County include a separate provision in this section which specifically allows for a permit condition that cites the potential penalties for violation of the permit. 40 CFR 403.8(f)(1)(iii)(E) requires that this penalty provision be included in all significant user permits.

Section 16-63(e) requires that a permit issued with any changes or new conditions include a schedule for compliance with the new provision. It is recommended that the phrase "where allowed by law" be added to the end of this sentence since the County cannot provide a schedule for compliance with a categorical standard in the permit if the compliance date for the applicable standard has passed.

Finally, the County must incorporate EPA's categorical standards into its regulations so that they can be enforced. This can be done by reference with language such as "The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated".

Please review the above comments and provide an estimate of when the regulations can be redrafted to address the deficiencies. It is important that the County revise and adopt its regulations as quickly as possible, since some of the deficiencies could adversely impact the County's ability to implement its pretreatment program.

If you have any questions regarding this matter, please contact me at 215-597-6279.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Lovell".

John Lovell  
Pretreatment Coordinator

cc: Paul Janiga, DE DNREC